

Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:02

PLR-122239-08

Date:

July 08, 2008

LEGEND:

X =

D1 =

D2 =

D3 =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Dear :

This responds to a letter dated May 8, 2008, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code).

X made an election to be treated as an S corporation. X's election was inadvertently terminated effective D1 because X's stock was held by Trust 1, which became an ineligible shareholder effective D1. X's election would have inadvertently terminated effective D2 had it not already terminated because stock was held by Trust 2, which became an ineligible shareholder effective D2. On D3, the stock held by Trust 1 and 2 was transferred to Trusts 3, 4 and 5 (New Trusts), which the taxpayer has represented as being eligible to make qualified subchapter S trust (QSST) elections. However, the beneficiaries of the New Trusts failed to make timely QSST elections. Therefore, X's election would have terminated D3, had it not already terminated. X represents that the termination was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the

corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that the termination of X's S corporation election on D1 was inadvertent within the meaning of § 1362(f). We further conclude that X's S election would have inadvertently terminated within the meaning of § 1362(f) on D2 and D3. Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from D1 and thereafter, provided X's S corporation election was valid and provided that the election was not otherwise terminated under § 1362(d).

Additionally, New Trusts will be treated as QSSTs described in § 1361(d)(3) (assuming that they qualify as QSSTs), and each QSST income beneficiary will be treated as the owner of X stock held by the New Trusts, provided that the income beneficiaries file QSST elections effective D3 with the appropriate service center within 60 days following the date of this letter. If New Trusts' income beneficiaries fail to file the QSST elections, this ruling is null and void. A copy of this letter should be attached to the QSST elections.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. This ruling is directed only to the taxpayer that requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: 2

Copy of this letter

Copy for § 6110 purposes